

House Bill 29 (AS PASSED HOUSE AND SENATE)

By: Representatives Jacobs of the 80th, Maddox of the 127th, Ramsey of the 72nd, Hatfield of the 177th, Lindsey of the 54th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the "Georgia Civil Practice Act," so as to provide for electronic service of pleadings subsequent to the original complaint; to provide for presumptions regarding service of pleadings by e-mail on an attorney; to provide for a stay of discovery when a motion to dismiss is filed; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the "Georgia Civil Practice Act," is amended by revising subsection (b) of Code Section 9-11-5, relating to service and filing of pleadings subsequent to the original complaint and other papers, as follows:

"(b) Same — How made. Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party ~~himself~~ is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to ~~him~~ the person to be served or by mailing it to ~~him~~ the person to be served at ~~his~~ the person's last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term 'delivery of a copy' means handing it to the ~~attorney or to the party,~~ person to be served or leaving it at ~~his~~ the person to be served's office with ~~his clerk or other~~ a person in charge thereof or, if ~~the~~ such office is closed or the person to be served has no office, leaving it at ~~his~~ the person to be served's dwelling house or usual place of abode with some person of suitable age and discretion ~~then~~ residing therein. 'Delivery of a copy' also means transmitting a copy via e-mail in portable document format (PDF) to the person to be served using all e-mail addresses provided pursuant to subsection (f) of this Code section and showing in the subject line of the e-mail message the words 'STATUTORY

27 ELECTRONIC SERVICE' in capital letters. Service by mail is complete upon mailing.
28 Proof of service may be made by certificate of an attorney or of his or her employee, by
29 written admission, by affidavit, or by other proof satisfactory to the court. Failure to make
30 proof of service shall not affect the validity of service."

31 **SECTION 2.**

32 Said chapter is further amended by adding a new subsection to Code Section 9-11-5, relating
33 to commencement of action and service, to read as follows:

34 "(f) *Electronic service of pleadings.*

35 (1) A person to be served may consent to being served with pleadings electronically by:

36 (A) Filing a notice of consent to electronic service and including the person to be
37 served's e-mail address or addresses in such pleading; or

38 (B) Including the person to be served's e-mail address or addresses in or below the
39 signature block of the complaint or answer, as applicable to the person to be served.

40 (2) A person to be served may rescind his or her election to be served with pleadings
41 electronically by filing and serving a notice of such rescission.

42 (3) If a person to be served agrees to electronic service of pleadings, such person to be
43 served bears the responsibility of providing notice of any change in his or her e-mail
44 address or addresses.

45 (4) If electronic service of a pleading is made upon a person to be served, and such
46 person certifies to the court under oath that he or she did not receive such pleading, it
47 shall be presumed that such pleading was not received unless the serving party disputes
48 the assertion of nonservice, in which case the court shall decide the issue of service of
49 such pleading."

50 **SECTION 3.**

51 Said chapter is further amended by revising subsection (e) of Code Section 9-11-6, relating
52 to time, as follows:

53 "(e) *Additional time after service by mail or e-mail.* Whenever a party has the right or is
54 required to do some act or take some proceedings within a prescribed period after the
55 service of a notice or other paper, other than process, upon him or her, and the notice or
56 paper is served upon ~~him~~ the party by mail or e-mail, three days shall be added to the
57 prescribed period."

58 **SECTION 4.**

59 Said chapter is further amended by adding a new subsection to Code Section 9-11-12,
60 relating to answers, defenses, and objections in civil practice, to read as follows:

61 "(j)(1) Stay of discovery. If a party files a motion to dismiss before or at the time of filing
62 an answer and pursuant to the provisions of this Code section, discovery shall be stayed
63 for 90 days after the filing of such motion or until the ruling of the court on such motion,
64 whichever is sooner. The court shall decide the motion to dismiss within the 90 days
65 provided in this paragraph.

66 (2) The discovery period and all discovery deadlines shall be extended for a period equal
67 to the duration of the stay imposed by this subsection.

68 (3) The court may upon its own motion or upon motion of a party terminate or modify
69 the stay imposed by this subsection but shall not extend such stay.

70 (4) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of
71 subsection (b) of this Code section or if any party needs discovery in order to identify
72 persons who may be joined as parties, limited discovery needed to respond to such
73 defenses or identify such persons shall be permitted until the court rules on such motion.

74 (5) The provisions of this subsection shall not modify or affect the provisions of
75 paragraph (2) of subsection (f) of Code Section 9-11-23 or any other power of the court
76 to stay discovery."

77 **SECTION 5.**

78 This Act shall become effective on July 1, 2009, and shall apply to motions to dismiss filed
79 after July 1, 2009.

80 **SECTION 6.**

81 All laws and parts of laws in conflict with this Act are repealed.